

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-99-166**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Ms. Yvonne Tavares
Mr. Colon C. Settle, Q.C.

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf assisted by his wife, [text deleted]; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: November 19, 2001

ISSUE: Termination of coverage for chiropractic expenses.

RELEVANT SECTIONS: Section 136 of The Manitoba Public Insurance Corporation Act (the 'Act') and Section 5 of Manitoba Regulation 40/94.

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

Reasons For Decision

On March 18, 1995, the Appellant, [text deleted], was involved in a serious motor vehicle accident and suffered serious injuries. The occupant of the second vehicle sustained fatal injuries.

Following the accident, the Appellant attended a chiropractor, [text deleted], who examined him on August 21, 1995, and reported: "acute cervical whiplash, limited movement of the head, acute lumbosacral sprain/strain, bilateral AC joints sprain from holding the wheel." [Appellant's

chiropractor] commenced manual therapy treatments approximately four to six weeks following the accident, and massage therapy occurred twice a week. Chiropractic treatments continued at a frequency of approximately three times per week until March 26, 1999, when MPIC terminated the funding of these treatments. Since March 26, 1999, the Appellant has continued to attend [Appellant's chiropractor] for ongoing chiropractic treatment.

On March 26, 1999, MPIC's case manager wrote to the Appellant, advising him that MPIC would no longer cover the costs of further chiropractic treatments on the following grounds:

In reviewing the file, I had also asked our medical coordinator for his opinion regarding ongoing chiropractic or physiotherapy treatments. It is his opinion that there is some evidence that chiropractic or physiotherapy treatments may be contraindicated. He would recommend that such treatments be discontinued. He also notes that ongoing spinal manipulation of therapy for approximately 3 ½ years without resolution suggests that this treatment has been ineffective. Therefore, we will no longer be covering the cost of any chiropractic treatments after the date of this letter.

On the same date, the case manager wrote to the Appellant's chiropractor, [text deleted], informing her of MPIC's decision to terminate payment of further chiropractic treatments. By letter dated April 12, 1999, [Appellant's chiropractor] wrote to the case manager seeking clarification of the reasons for the termination of the coverage of the chiropractic treatments to the Appellant.

MPIC's medical consultant, [text deleted], who reviewed the entire file of the Appellant and whose medical opinion was relied upon by the case manager to terminate the cost of the Appellant's chiropractic treatments, replied to [Appellant's chiropractor] in a letter dated April 23, 1999. [MPIC's doctor] stated:

As you know, the claimant has had various chronic complaints since his motor vehicle collision of August 18, 1995. Upon review of the file, it appears that this claimant's diagnoses may be summarized as:

- Dizziness of unknown origin

- Possible brain stem infarction
- Chronic headache
- Possible diabetes insipidus
- Whiplash-Associated Disorder type II

He has seen numerous healthcare practitioners, including you, from various backgrounds. He has also undergone various treatments. There has been some resolution of his neurologic deficit over time and there is currently no objective evidence of vertigo on repeated testing from different practitioners. He now appears to be at maximum medical improvement.

The basis for recommending that ongoing therapy (both chiropractic and physical therapy) be discontinued is as follows:

- The claimant appears to be at maximum medical improvement.
- Notwithstanding his ongoing symptoms, there has been no objective improvement in his condition over the last several months with the care that he has received.
- His brain dysfunction, which may include a small brain stem infarction and diabetes insipidus, would not be expected to respond to either chiropractic or physiotherapy.

The Appellant sought an internal review of the case manager's decision.

Prior to the review taking place, the Internal Review Officer received additional reports from [text deleted], the Appellant's family physician, dated August 3, 1999, and from [text deleted], the Appellant's chiropractor, dated August 10, 1999. The Internal Review Officer provided these reports to [MPIC's doctor] for his comment.

[MPIC's doctor], in a report dated September 2, 1999, advised the Internal Review Officer:

The persistence of symptoms, in and of itself, is insufficient grounds for ongoing chiropractic care. As you know, chiropractic care has been ongoing for approximately 4 years with no objective improvement noted for the past 3 years. The rationale for discontinuing chiropractic care has been detailed in my letter of April 23, 1999. In consideration of the new correspondence presented, my opinion on this issue has not changed. I note that [Appellant's chiropractor] has indicated the claimant is being treated for conditions that were not included in my list of diagnoses in my letter of April 23, 1999. However, she has not presented any additional diagnoses in her narrative report.

In her decision dated September 27, 1999, the Internal Review Officer confirmed the decision of MPIC's case manager, terminating the Appellant's entitlement to treatment benefits as of March 26, 1999. The Internal Review Officer stated:

Next I will deal with your chiropractic treatments. [MPIC's doctor] had reviewed the two new reports from [Appellant's chiropractor] and [Appellant's doctor]. [MPIC's doctor] had previously reviewed your file and at that time he advised that you had been receiving chiropractic care for four years with no objective improvement for the past three years. After reviewing the new medical information [MPIC's doctor] found nothing to change his previous opinion. In fact he states that:

“The persistence of symptoms, in and of itself, is insufficient grounds for ongoing chiropractic care.”

After reviewing [MPIC's doctor's] opinion and previous opinions on this file, I can advise that I agree with him fully. You have reached maximum medical improvement with chiropractic care and therefore no further chiropractic care will be funded.

The Appellant has appealed the decision of the Internal Review Officer dated September 27, 1999, to this Commission with regard to the issue of the termination of coverage for chiropractic treatments.

Discussion:

Section 136 of the MPIC Act provides that:

Reimbursement of victim for various expenses

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under The Health Services Insurance Act or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

- (a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care....

Section 5 of Regulation 40/94 provides that:

Medical or paramedical care

5 Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under The Health Services Insurance Act or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

- (a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician....

Prior to the appeal hearing taking place, the Commission received further reports from [Appellant's doctor] dated June 9, 2000, and January 29, 2001, copies of which were provided to MPIC. In his letter dated January 29, 2001, [Appellant's doctor] requests that MPIC reinstate the funding of the chiropractic treatments in respect of the Appellant.

At the conclusion of the appeal hearing, which took place on November 19, 2001, the Commission requested that [independent chiropractor] review the entire medical file of the Appellant, to examine the Appellant, and to provide an assessment as to whether or not the chiropractic treatments that the Appellant had been receiving from [Appellant's chiropractor] subsequent to March 26, 1999, were medically required. On December 18, 2001, [independent chiropractor] provided the Commission with his medical report, a copy of which was provided to both parties. In this report, [independent chiropractor] stated:

[The Appellant] received ongoing chiropractic therapy from the date of his accident, August 18, 1995 to March 26, 1999 at a reported frequency of three times a week. It was noted in the last 12 – 18 months of his treatment up to March 26, 1999 that his overall situation, symptoms were increasing in severity. The termination of treatment on March 26, 1999 by MPI in my opinion was reasonable.

Objectively on my examination [the Appellant] has limited ranges of movement of the lumbar spine and neurological findings relating to the noted brain stem injury that has been reported in multiple exams. I also noted mild weakness in abduction of his fifth fingers, which is noted to be bilateral and could be the normal finding for [the Appellant]. It is difficult to relate this situation to a specific injury and [the Appellant] could not state definitively if this situation was

present prior to his accident. Subjectively [the Appellant] complains of cervical discomfort, headache, dizziness, and increasing lumbosacral/leg discomfort.

[Independent chiropractor] further stated:

Following my evaluation it is my opinion that the headache and dizziness that [the Appellant] experiences is not cervicogenic in origin. Chiropractic therapy for this issue will not be of benefit as there are no specific regions of intersegmental dysfunction that one can attribute to his symptoms.

As stated above it is my opinion that the termination of therapy by MPI on March 26, 1999 was a reasonable approach. Following my examination it is my opinion that [the Appellant] has obtained a maximum therapeutic benefit from chiropractic therapy. He has continued on an occasional basis, once every two-three weeks to consult his chiropractor for ongoing treatment. This does not seem to have had much affect on his headache or dizziness and the lumbar discomfort has been continuing to increase. For this reason it is my opinion that supportive therapy, or ongoing chiropractic therapy would be of no value for [the Appellant].

[Appellant's chiropractor] wrote to the Commission in response to [independent chiropractor's] report of December 18, 2001. [Appellant's chiropractor] disagreed with [independent chiropractor's] opinion and advised the Commission that it was the opinion of both herself, [Appellant's doctor], and the Appellant that the Appellant continued to require chiropractic care. This letter was provided to [independent chiropractor] for his response and on March 11, 2002, [independent chiropractor] wrote to the Commission and stated:

I have reviewed the material from [Appellant's chiropractor]. It contains no objective information regarding the need for ongoing chiropractic therapy. [Appellant's chiropractor] is of the opinion that [the Appellant] requires ongoing chiropractic therapy as he continues to experience ongoing headache, cervical thoracic and lumbar discomfort. In spite of a poor response to therapy and/or worsening of his symptoms [Appellant's chiropractor] maintains that [the Appellant] requires further care. In my opinion a lack of response to therapy by [the Appellant] is not an indication for continued treatment. I noted in my report that it was my opinion that [the Appellant] had obtained maximum therapeutic benefit from [Appellant's chiropractor's] treatment and that is my current opinion.

The comments noted in correspondence from [Appellant's chiropractor] and [the Appellant] do not have any objective basis aside from the fact that they report [the Appellant] has ongoing symptoms. The symptoms have been ongoing since the date of the accident and unfortunately have not responded to his current therapy. Continuing this therapy on the basis of ongoing discomfort and lack of response

to treatment is not beneficial to [the Appellant]. In my opinion continuing passive therapy will foster the chronicity of his symptoms and will also promote treatment dependency. There is no change in my opinion. I am not convinced that ongoing treatment from [Appellant's chiropractor] is beneficial nor will alter [the Appellant's] situation.

In order to qualify for funding under the Personal Injury Protection Plan contained in the MPIC Act and Regulations, expenses incurred by the victim of the accident must be medically required. In the case at hand, the Appellant has received numerous chiropractic treatments since beginning therapy, yet there has been little indication of a reduction of symptomatology as treatment has continued.

A careful consideration of the totality of evidence before us, including the submissions by the Appellant and counsel for MPIC, does not persuade us that the Appellant has established on the balance of probabilities that the continuation of chiropractic treatments subsequent to March 26, 1999, was medically necessary within the meaning of Section 5 of Manitoba Regulation 40/94. We accept the medical opinions of [MPIC's doctor] and [independent chiropractor] that MPIC was justified in terminating payment for the chiropractic treatment to the Appellant as of March 26, 1999.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer, bearing date September 27, 1999.

Dated at Winnipeg this 23rd day of April, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

COLON C. SETTLE, Q.C.